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**States Court of Appeals
THE SECOND CIRCUIT**

PAGE 1

Second Circuit Rule 27(a) governing
use of this form is reprinted on reverse of
Page 2. Note requirement that supporting
affidavits be attached.

UNIVERSAL CITY STUDIOS V. NINTENDO

86-7077, 7099

Docket Number

NOTICE OF MOTION

state type of motion

for prior panel

Use short title

MOTION BY: (Name, address and tel. no. of law firm and of
attorney in charge of case)

Michael W. Schwartz
Wachtell, Lipton, Rosen & Katz
(212) 371-9200

OPPOSING COUNSEL: (Name, address and tel. no. of law
firm and of attorney in charge of case)

John Kirby, Jr.
Mudge Rose Guthrie Alexander & Ferdon
(212) 510-7000

Has consent of opposing counsel:

A. been sought?

☒ Yes ☐ No

B. been obtained?

☐ Yes ☒ No

Has service been effected?

☒ Yes ☐ No

Is oral argument desired?

☐ Yes ☒ No

(Substantive motions only)

Requested return date:

(See Second Circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order?

☒ Yes ☐ No

B. by firm date of argument notice?

☐ Yes ☒ No

C. If Yes, enter date: "As early as the week of

Judge or agency whose order is being appealed: May 5, 1986"

Honorable Robert W. Sweet, U.S.D.J.

Brief statement of the relief requested:

Request for Judges Meskill and Kearse, who were on the panel on the last
appeal in this action, to be on the panel which will hear the present
appeal and cross-appeals. (Judge Friendly was the remaining panel member.)

Complete Page 2 of This Form

By: (Signature of attorney)

Michael W. Schwartz
Signed name must be printed beneath
Michael W. Schwartz

Appearing for: (Name of party)

Universal City
Studios, Inc.

Date

April 18, 1986

Appellant or Petitioner:

☒ Plaintiff ☐ Defendant

Appellee or Respondent:

☐ Plaintiff ☐ Defendant

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is
May 5, 1986, to a date to be determined.

granted. ~~xxxxxx~~ Oral argument is adjourned from

FOR THE COURT,

Jean E. DeFreitas
Jean E. DeFreitas,
Deputy Clerk

Circuit Judge



4/22/86

Previous requests for similar relief and disposition:

None

Statement of the issue(s) presented by this motion:

Whether Judges Meskill and Kearse, who sat on the prior appeal in this action, should be included on the panel which will hear the present appeal and cross-appeal in the interest of judicial economy and in view of the complexity of the case.

Brief statement of the facts (with page references to the moving papers):

This appeal requires the Court of Appeals to review issues raised in two different, but related, decisions of the District Court, and a third, also related, decision of the California District Court. On the prior appeal, heard by Judges Friendly, Meskill and Kearse, one of the decisions (578 F. Supp. 911) was affirmed on limited grounds (746 F.2d 112). The other issues raised there did not have to be decided then but are raised again now on the appeal from 615 F. Supp. 838.

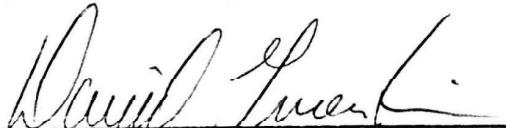
Summary of the argument (with page references to the moving papers):

The prior panel heard and thus is already acquainted with some of the issues that Universal presses on this appeal. The prior panel did not have to reach such issues (principally relating to Universal's claim of a trademark in King Kong) because of the availability there of a third independent ground for affirmance (lack of confusion between King Kong and Donkey Kong). Following affirmance, the District Court found Universal's conduct tortious for asserting rights in King Kong, and went further to impose punitive damages and Rule 11 and other sanctions for so asserting. (Predecessor counsel, Townley & Updike, supplied the Rule 11 certification.) The issues of Universal's claim of rights in King Kong are once again at issue on this appeal. It would serve the interests of judicial economy to have a panel which includes judges already familiar with this case.

AFFIDAVIT OF SERVICE

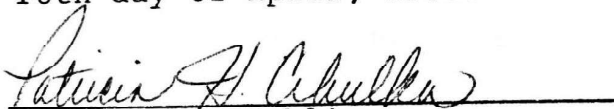
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The undersigned, an attorney with the firm of Wachtell, Lipton, Rosen & Katz, counsel to Universal City Studios, Inc., movant, appellant and cross-appellee, effected service of the Notice of Motion of today's date on Mudge Rose Guthrie Alexander & Ferdon, counsel of record for Nintendo Co., Ltd. and Nintendo of America, Inc., respondents, appellees and cross-appellants, by telecopy.



David Gruenstein

Sworn to before me this
18th day of April, 1986.



Notary Public

PATRICIA H. CIBULKA
Notary Public, State of New York
No. 41-4847806
Certificate Filed in New York County
Commission Expires March 30, 1987

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 86-7077, 7099

-----X
UNIVERSAL CITY STUDIOS, INC., :
 :
 Plaintiff-Appellant, :
 Cross-Appellee, :
 :
 V. : AFFIDAVIT
 :
 NINTENDO CO., LTD. and NINTENDO OF :
 AMERICA, INC., :
 :
 Defendants-Appellees, :
 Cross-Appellants. :
-----X

STATE OF NEW YORK)
 : ss.:
 COUNTY OF NEW YORK)

MICHAEL W. SCHWARTZ, being duly sworn, deposes and says that he is a member of the bar of this Court, and of the firm of Wachtell, Lipton, Rosen & Katz, attorneys for Universal City Studios, Inc., appellant-cross appellee herein ("Universal").

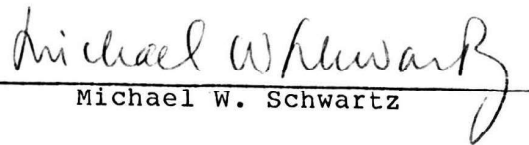
1. This affidavit is respectfully submitted in support of Universal's motion requesting that Judges Meskill and Kearse of this Court be on the panel which will hear the

present appeal and cross-appeal. The matter set forth in this affidavit is based upon deponent's personal knowledge or upon matters on record in this Court.

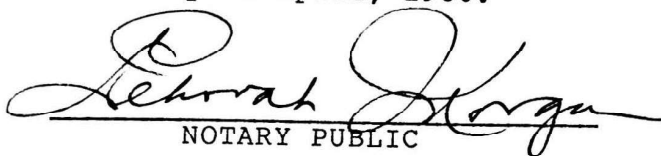
2. The present appeal and cross-appeal represent the second time this case has been before this Court. The prior appeal, which is reported at 746 F.2d 112 (2d Cir. 1984), was heard by a panel consisting of Judges Meskill, Kearse and the late Judge Friendly. Universal believes that judicial economy will be served if Judges Meskill and Kearse hear the present cross-appeals. By virtue of their having heard the prior appeal, they are already familiar with the case and with certain of the issues which Universal presses on its present appeal.

3. Additionally, these cross-appeals are complex. Universal's appeal requires the Court of Appeals to review issues in two different, but related, decisions of the District Court, and a third, also related, decision of the United States District Court for the Central District of California. Moreover, Universal's appeal also challenges the District Court's imposition of punitive damages and sanctions. In light of the complexity of the case, Universal respectfully submits that it would be appropriate for judges having familiarity with it to be included on the panel.

4. No prior application has been made of the same or similar relief. Opposing counsel has declined to consent to this motion.


Michael W. Schwartz

Sworn to before me this
18th day of April, 1986.


NOTARY PUBLIC

DEBORAH MORGAN
Notary Public, State of New York
No. 03-4843783
Qualified in Bronx County
Commission Expires March 30, 1987